

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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1597 ASHFIELD VALLEY TRUST, et al.,

Plaintiff(s),

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION SYSTEM, et al.,

Defendant(s).

Case No. 2:14-CV-2123 JCM (CWH)

ORDER

Presently before the court is intervenor defendant Federal Housing Finance Agency (“FHFA”) and defendant Federal National Mortgage Association System’s (“Fannie Mae”) motion for summary judgment. (ECF No. 93). Counter defendant and plaintiff 1597 Ashfield Valley Trust (“Ashfield”), defendant and cross claimant Oscar Moreno, counter defendant Absolute Collection Services, LLC (“Absolute”), and counter defendant Hiddencrest/Parkhurst Community Association (“Hiddencrest”) each filed a response. (ECF Nos. 95, 96, 98, and 99). FHFA and Fannie Mae filed a reply. (ECF No. 101).

Also before the court is counter claimant and defendant Oscar Moreno’s motion for leave to file an amended counterclaim. (ECF No. 105). Counter defendant Absolute Collection Services, LLC filed a response. (ECF No. 108). Mr. Moreno filed a reply. (ECF No. 112).

Plaintiff Ashfield initiated this lawsuit to, *inter alia*, quiet title to real property. (ECF No. 1-1). Ashfield obtained title to the property from Hiddencrest at a homeowners’ association foreclosure sale. Amongst other things, Mr. Moreno’s answer to the complaint and Fannie Mae’s answer to his counterclaim both allege that Nevada Revised Statute 116.3116, *et seq.*, under which the foreclosure was effectuated, is unconstitutional. (ECF No. 20 at 13; ECF No. 43 at 12).

1 A party who files a pleading, written motion, or other paper drawing into question the
2 constitutionality of a state statute must promptly “file a notice of constitutional question stating
3 the question and identifying the paper that raises it, if . . . the parties do not include the state, one
4 of its agencies, or one of its officers or employees in an official capacity” FED. R. CIV. P.
5 5.1(a)(1)(B). Additionally, FRCP 5.1 requires the court to “certify to the appropriate attorney
6 general that a statute has been questioned” under 28 U.S.C. § 2403. FED. R. CIV. P. 5.1(b). Section
7 2403 states that the court “shall permit the [s]tate to intervene for presentation of evidence, if
8 evidence is otherwise admissible in the case, and for argument on the question of
9 constitutionality.” 28 U.S.C. § 2403(b).

10 Here, no notice has been provided to the attorney general of Nevada, and the court has not
11 certified the question to the attorney general. In light of the foregoing rule and statute, the court
12 will deny the parties’ motions without prejudice to allow: (1) Oscar Moreno and Fannie Mae to
13 file notices of constitutional question, (2) the court to comply, and (3) the attorney general to
14 intervene. Similarly, other dispositive motions will be denied without prejudice to allow Mr.
15 Moreno and Fannie Mae to comply with the rule. The parties may renew their motions after the
16 attorney general has been afforded time to respond.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that intervenor defendant
19 Federal Housing Finance Agency and defendant Federal National Mortgage Association System’s
20 motion for summary judgment (ECF No. 93) be, and the same hereby is, DENIED without
21 prejudice.

22 IT IS FURTHER ORDERED that counter defendant Hiddencrest/Parkhurst Community
23 Association’s motion for summary judgment (ECF No. 94) be, and the same hereby is, DENIED
24 without prejudice.

25 IT IS FURTHER ORDERED that counter defendant Absolute Collection Services, LLC’s
26 motion to dismiss counterclaim (ECF No. 100) be, and the same hereby is, DENIED without
27 prejudice.

1 IT IS FURTHER ORDERED that counter claimant and defendant Oscar Moreno's motion
2 for leave to file an amended counterclaim (ECF No. 105) be, and the same hereby is, DENIED
3 without prejudice.

4 IT IS FURTHER ORDERED that Oscar Moreno and Federal National Mortgage
5 Association System shall promptly file notices of constitutional questions, pursuant to Federal
6 Rule of Civil Procedure 5.1(a)(1)(B).

7 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
8 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
9 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
10 Nevada for presentation of argument on the question of the constitutionality of the statute.

11 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
12 certified mail to the Nevada attorney general.

13 DATED August 2, 2016.

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UNITED STATES DISTRICT JUDGE